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The Progressive Approach of Indian Judiciary in Affirming the Rights of Female Partners in Live-in Relationships

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ABSTRACT

The concept of live-in relationships has recently experienced significant growth. As India is a country where multiple religions are being practiced, every religion recognizes marriage as permissible and considers live-in relationships as sinful and morally wrong. Over time, all societies transform. The world still views India as a nation where marriage holds a sacred status both theoretically and practically. At present, no legislation in India has explicitly conceptualized the scope of the practice of live-in relationships. The Protection of Women from Domestic Violence Act, 2005 is the first law that has recognized live-in relationships and provided protection to female partners in its ambit by interpreting its various provisions of law. Due to the inadequacy of existing law to address the issues and challenges relating to live-in relationships, the Indian judiciary has rendered rulings that serve as the country's legal guidelines. Given various interpretations of laws through judicial pronouncements, the legitimacy of live-in relationships is studied in detail. The rights of the female partners in live-in relationships concerning maintenance, domestic violence, inheritance, and legal rights of the children born outside the marriage and its dissolution have been discussed. In India, recently the Uttarakhand Uniform Civil Code, 2024 has been passed which covers the registration and termination of live-in relationships. The paper concludes with the suggestion for the enactment of specific laws to govern live-in relationships in India.

Keywords: *Live-in relationship, female partners, domestic violence, maintenance, inheritance.*

I. INTRODUCTION

“With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.”

*– Justice A.K. Ganguly in **Revanasiddappa & Anr. v. Mallikarjun & Ors.**²*

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² 2011 (2) UJ 1342 (SC).

Live-in relationships have been present in India for a long time; however, it appears that in recent years, it has been highlighted. An unmarried couple who lives together sharing the same house and resources for a long time and their relationship is akin to marriage then it can be said as a live-in relationship. Because live-in relationships fundamentally challenge the social system, it has been the focus of discussions and arguments for a long time. The Supreme Court of India and various High Courts have supported and acknowledged the legitimacy of live-in relationships. Living together has become a popular concept just as a means of escaping the annoyances of marriage. At the same time, there are many reported cases of crimes against a female live-in partner in the absence of explicit statutes concerned with their rights. Recently, a dreadful incident has come to light wherein Aaftab Amin Poonawala murdered his live-in partner, Shraddha Walkar, and dumped the dead body in the forest of Delhi. In a separate incident of a similar nature, Sahil Gehlot is accused of killing his lover by strangling her, stuffing her body in the refrigerator of his restaurant in southwest Delhi, and then leaving the same day to wed another lady. In the current scenario, it is pertinent to focus on the legal recognition of live-in relationships and the rights and remedies available to female partners and children born out of such relationships in various legislations from the lens of judicial interpretation. In India, there is no particular law that has categorically stated about live-in relationships and the rights and obligations of the partners.

II. CONCEPT OF LIVE-IN RELATIONSHIP

In postmodern culture, family arrangements are extremely diverse, and people have far more freedom of choice in their lives than were previously limited. The family members are not always bonded together by formal marriage, blood, or adoption. The sociologists used the term "postmodern family" to describe the new types of family that are emerging in present culture. One of the forms of the postmodern family is partners in a live-in relationship or as termed by sociologists "cohabitation families". "It is formed when a man and woman live together in a sexual relationship without being married. Cohabiting couples may choose to live together to spend more time together or to save money on living costs."³ Legally, the live-in relationship can be defined as "an arrangement where unmarried partners who live together to maintain a long-term connection in a manner akin to marriage are said to be in a live-in relationship".

Defining the term live-in relationship, in **Alok Kumar v. State and Anr**⁴ the Delhi High Court stated "Live-in relationship' is a walk-in and walk-out relationship". There are no conditions on

³ IGNOU, *Marriage, Family and Kinship, School of Social Sciences*, EGYANKOSH, BSOE-146, 26 (2021) <https://egyankosh.ac.in/bitstream/123456789/87340/1/Block-1.pdf>

⁴(2010) SCC OnLine Del 2645.

this relationship, nor does it result in a binding contract between the parties. Every day, the parties renew their agreement to cohabit. This agreement may be dissolved by either party without the other party's consent, and either party may leave at any time.”⁵

In the absence of laws in India regarding live-in relationships, the exact definition is not known. Through various cases, the judiciary has interpreted the existing laws and provided meaningful definitions as well as granted some rights to the partner, so that the partners can prevent the misuse of such partnerships.

III. LEGALITY OF LIVE-IN RELATIONSHIP IN INDIA

(A) Constitutional dimensions

In India, every person has been guaranteed the fundamental “right to life and personal liberty” under “Article 21 of the Indian Constitution”, which means that they are free to live as they like. Although live-in relationships may be considered sinful and immoral by Indian society, it has been upheld as legal in the eye of the law. The apex court has observed that if a couple chooses to cohabit, it is well within their rights to do so. In **Shayara Khatun @ Shaira Khatun & Ano. v. State of U.P.⁶ & Zeenat Parveen & Ano. v. State Of U.P.⁷**, the Hon'ble Pritinker Diwaker, J. Hon'ble Ashutosh Srivastava, J of the Allahabad High Court remarked that “Live-in relationships are now commonplace and have the support of the Supreme Court. It is necessary to evaluate a live-in relationship through the prism of personal liberty resulting from the right to life provided by Article 21 of the Indian Constitution rather than ideas of societal morality.”⁸ In **Indra Sarma vs V.K.V.Sarma,⁹** the apex court defined the live-in relationship as a matter of personal choice. It held, “Live-in or marriage-like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.”

(B) Legislative Dimensions

In contrast to many other nations like the U.K., U.S., Canada, and Australia, live-in relationships are not socially acceptable in India. Even though it may be seen as immoral, a live-in relationship between two consenting adults who are heterosexual does not constitute an offence, according to the ruling in **Lata Singh v. State of U.P.¹⁰** But for the first time in Indian history,

⁵ *Ibid.*

⁶ WRIT - C No. - 19795 of 2021

⁷ WRIT - C No. - 28049 of 2021

⁸ *Ibid.*

⁹ (2013) 15 SCC 755

¹⁰ AIR 2006 SC 2522.

the “Protection of Women from Domestic Violence Act, 2005” has been passed to protect couples who have a relationship in the nature of marriage that is not a marriage. There is no particular legislation that explicitly recognises live-in relationships in India. Recently, the Uniform Civil Code of Uttarakhand, 2024 legally recognized live in relationship. The Code defined “live-in relationship”¹¹ and proposed rules for compulsory registration of live-in relationships by giving a “statement of live-in relationship”¹² and in case of non-compliance within one month, the partners shall be liable to pay a fine of a maximum of rupees 10,000 or imprisonment for maximum three months or both.¹³ It confers full legal rights to a child born from such a union.¹⁴ The relationship can be discontinued by giving a “statement of termination”¹⁵ to the Registrar under the Code.

(C) Judicial dimensions

The Hon’ble judges of the High Courts and Supreme Court upheld the legality of live-in relationships and demonstrated a desire to uphold the rights of female partners in live-in relationships through its decisions. In the case of **A. Dinohamy v. W. L. Iyanapatabendige Blahamy**,¹⁶ the Privy Council laid down the general principle that “where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary is proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.”¹⁷ **Badri Prasad v. Dy. Director of Consolidation**¹⁸ recognized live in relationship as valid. In this case, the Hon’ble Court held that “where the live-in partner lived together for enough period as a married couple (husband & wife) then it will be presumed that they are in the marital wedlock. And there will be a rebuttable presumption of law in favour of marriage. And the burden of proof will lie on that person who wants to prove that there is no marriage took place between them and they are unmarried.”. In the case of **S.Khushboo v.**

¹¹ The Uniform Civil Code of Uttarakhand, 2024, § 3 [4(b)] It has defined live in relationship as a relationship between a man and a woman who cohabit in a shared household through a relationship, in the nature of marriage provided that the partners are not within the prohibited degree of relationship, or where one of the partner is married or minor, or the consent of the another partner has been obtained by force, coercion, undue influence, misrepresentation or fraud.

¹² The Uniform Civil Code of Uttarakhand, 2024, §3 [4(d)] Statement of Live in relationship means a jointly signed statement to the effect that a man and woman are in a live in relationship or intend to enter into such a relationship, submitted to the Registrar in the prescribed manner for registration.

¹³ The Uniform Civil Code of Uttarakhand, 2024, §387.

¹⁴ The Uniform Civil Code of Uttarakhand, 2024, §379.

¹⁵ The Uniform Civil Code of Uttarakhand, 2024, §3 [4(e)] Statement of Termination means a signed statement by any or both partners to an existing live in relationship that such relationship has been terminated and submitted to the Registrar in the prescribed manner.

¹⁶ AIR 1927 PC 185.

¹⁷ *Ibid.*

¹⁸ AIR 1978SC1557.

Kanniamal & Another¹⁹, it was observed that even if it might be viewed as immoral, a live-in relationship between two consenting adults is not illegal, with the obvious exception of adultery. The Supreme Court framed certain guidelines to ascertain whether pre-marital association constitutes a live-in relationship or not, in the case of **D. Velusamy v. D. Patchaiammal**²⁰ in 2010, albeit they were not all-inclusive: -

- "1) The couple must present themselves as being comparable to spouses to society.
- 2) They have to be old enough to get married.
- 3) They must meet all other requirements to enter a lawful marriage, including not already being married.
- 4) They had to have lived together freely and presented themselves to others as being close to spouses for a considerable amount of time.²¹

As there is neither proper codified law mentioning the rights of couples who are in a Live-in Relationship nor any law for the children who are born out of a Live-in Relationship, it creates a gap in dealing with personal matters.

IV. RIGHTS OF THE FEMALE PARTNER IN LIVE- IN RELATIONSHIPS AS RECOGNIZED BY INDIAN JUDICIARY

Live-in relationship is not explicitly provided in any existing Indian laws. The Honourable Supreme Court by treating the purported "live-in relationship in the nature of marriage", grants some privileges to the female partner only in certain circumstances. Following are the rights that are conferred to the female partners in live-in relationships by the judicial interpretations.

(A) Rights Against Domestic Violence

Women in live-in relationships are protected by "the Protection of Women from Domestic Violence Act, 2005" in cases of physical, sexual, verbal, emotional, or economic abuse. The live-in relationship has been legitimised by the Indian judiciary and further, it becomes inclusive under the ambit of "The Protection of Women from Domestic Violence Act, 2005". The court by way of judicial interpretation defines the term "domestic relationship" as provided under Sec.2(f) of the "Protection of Women from Domestic Violence Act, 2005" as "a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of

¹⁹ SLP (Crl.) No. 4010 of 2008.

²⁰ AIR 2011 SC 479.

²¹ *Ibid.*

marriage, adoption or are family members living together as a joint family.”²² The National Commission for Women recommended in June 2008 that live-in couples be treated equally with legally married couples to safeguard the interests of women who are the victims of domestic violence and who may be entitled to maintenance under Section 125 of the Criminal Procedure Code of 1973.

The Honourable Justice A.K. Ganguly in **Revanasiddappa v. Mallikarjun**²³, stated that Indian courts have taken the initiative to close the gap left by the lack of specific legislation governing live-in partnerships. Although society may deem it to be unethical, it is not regarded as "illegal" by the law.²⁴ In **Indra Sarma v. V.K.V. Sarma**²⁵, the apex court laid down certain conditions for testing under what circumstances, a live-in relationship will fall within the expression relationship in the nature of marriage under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005.

- i. “Duration of period of relationship must be a reasonable period to maintain and continue a relationship which may vary from case to case
- ii. Shared household²⁶
- iii. Pooling of resources and financial arrangements to support each other or by any one of the partners
- iv. Domestic arrangements where the woman is responsible for household management
- v. Sexual relationship not just for pleasure, but for emotional support and companionship and procreation of children
- vi. Joint responsibility of raising children born out of the relationship indicates that parties intend to have a long-standing relationship
- vii. Socialize with friends, relatives, and others, as a husband and wife
- viii. Intention and conduct of the parties with respective roles and responsibilities.”

Therefore, live-in relationships are acceptable under “the Protection of Women from Domestic Violence Act,2005” and women partners have a right under the law for the protection against domestic abuse.

²² The Protection of Women from Domestic Violence Act, 2005, No.43, Acts of Parliament, 2005(India) §. 2(f), No.43, Acts of Parliament, 2005(India).

²³ (2011) 11 SCC 1.

²⁴ *Ibid.*

²⁵ (2013) 15 SCC 755.

²⁶The Protection of Women from Domestic Violence Act, 2005, §. 2(s), No.43, Acts of Parliament, 2005(India).

(B) Right to Maintenance

All religions, including Hinduism, Islam, and Christianity, have personal rules that provide spouses the right to maintenance. None of these religions have accepted the idea of a non-marital partnership. An unmarried woman who cohabitates with a man, however, is viewed as unchaste. Courts have broadened the application of the remedies available under Section 125 of the Criminal Procedure Code, 1973 because women involved in long-term non-marital relationships are not entitled to any relief under personal laws. The Malimath Committee Report (2000) headed by Justice Malimath recommended that the definition of "wife" under Section 125 of the Criminal Procedure Code required wide interpretation and it can include a female partner in a live-in relationship. Only those female partners can be covered who lived together for a significant amount of time during the duration of the first marriage.²⁷ The financial needs of the women will be taken care of by their partners who are not able to maintain themselves.

In **Chanmuniya v. Virendra Kumar Singh Kushwaha**²⁸, the Supreme Court observed that “where a man has lived with a woman for a significant amount of time, even though they may not have met the legal requirements for a valid marriage, the male person should be made liable to pay the woman maintenance if he deserts her. By enjoying the benefits of a de facto marriage without fulfilling the duties and obligations, the man shouldn't be permitted to take advantage of legal loopholes. The provision of maintenance in Section 125 is aimed to avoid vagrancy and destitution, which would result from any other interpretation.”²⁹

(C) Right to inheritance

After the amendment in 2005, a woman's right to ancestral property and self-acquired property was secured by the “Hindu Succession Act, 1956”. The female partner in live-in relationships has a right to receive all of her deceased husband's property if there are no other sharers. She is entitled to an equal share of the estate as other heirs do. In **Dhannu Lal v. Ganeshram**³⁰, the Supreme Court of India ruled that live-in couples are assumed to be legally wedded to one another. Additionally, the female partner who remains in the live-in relationship will be eligible to inherit the live-in partner's self-acquired property upon his passing. In **Singamsetty Narayana v. Konatham Lakshmmam**,³¹ the court stated that the expression used in Section

²⁷ Government of India, Ministry of Home Affairs, *Report: Committee on Reforms of Criminal Justice System*, 1, 189, (2003) mha.nic.in/pdfs/criminal_justice_system.pdf.

²⁸ (2011) 1 SCC 141.

²⁹ *Ibid.*

³⁰ Civil Appeal No.3411 of 2007.

³¹ II AIR2012AP54

14 of the Hindu Succession Act, 1956, is not a “Hindu widow” but a “woman” and female partners would be covered in that. The court while explaining the position under Hindu law, held that even though the female partner in the live-in relationship did not enjoy the same status as that of the wife, she was entitled to be maintained by her male partner, and therefore, any property settled on her by him would be for her maintenance and since it is instead of her pre-existing rights of maintenance it would mature into absolute ownership under Sec.14 of the Hindu Succession Act, 1956.³²

(D) Rights of children born out of Live-in Relationship

The legislation governing the rights of children born outside of marriage or civil union remains fumbles in the dark. Every child is given the status of legality under “The Hindu Marriage Act of 1955”, regardless of whether they were born out of valid, voidable, or void marriages. However, because the live-in relationship is not recognized as marriage under “the Hindu Marriage Act,1955”, the status of any children born as a result of it is still in question. Furthermore, no law guarantees the legitimacy of children born from such a union. In **Madan Mohan Singh and Ors. v. Rajni Kant and Anr.**³³ The Bench of Justice P Sathasivam and B S Chauhan said that “if a man, as well as a lady, are living under the same roof and living together for quite a few years, there will be presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate”. In a recent case of **Kattukandi Edathil Krishnan & Anr vs Kattukandi Edathil Valsan & Ors**³⁴, the court declared that "children from live-in relationships have a coparcenary right to the property of their ancestors. In the absence of proof to the contrary, the child of the couple who has lived with them for a long time cannot be denied access to family property."³⁵

(E) Right to terminate the live-in relationship

In the live-in relationship, the doors are open for both partners, therefore women can also separate from their live-in male partner in the absence of special legal requirements. The live-in partner can maintain their individuality and therefore cannot be recognized as a "wife" or "domestic partner." Couples in a live-in relationship are free to end their partnership without the need for judicial intervention.

V. CONCLUSION

³² DR. POONAM PRADHAN SAXENA, FAMILY LAW LECTURES FAMILY LAW II, 361 (LexisNexis 2022).

³³ AIR2010SC2933.

³⁴ 2022 SCC Online SC737.

³⁵ *Ibid.*

A live-in relationship is very fragile as there is no concept of husband and wife. There is no specific law on the maintenance and succession of female partners in a live-in relationship. A child born out of wedlock brings with it a plethora of legal issues and complexities relating to maintenance rights, legitimacy and illegitimacy issues, inheritance rights, custody rights, and the right to give adoption in the event of termination of their relationship. The Adoption Regulations, 2017 released by the "Adoption Resource Authority" deals with eligibility criteria for prospective adoptive parents under Rule 5. As per Rule 5(2)(b) and 5(2)(c), the single parent can adopt a child but adoption is not permissible in the case of live-in couples as Rule 5(3) requires two years of stable marital relationship of adopting couple. Thus, in law though there is no specific provision regarding adoption by live-in couples and the right to give children in adoption by live-in couples.

(A) Suggestions

a. Comprehensive Legislation for Legal Recognition

In such a scenario, suggestions offered are that there is an urgent need for comprehensive legislation that would define and explain the idea of a live-in relationship. The length of time necessary to recognize a live-in relationship as a nature of marriage, provide parties' rights, and recognize children conceived outside of a live-in relationship should all be clearly outlined in the law. Although live-in relationships give people individual independence, they also carry a high level of insecurity, hence laws are needed to reduce their drawbacks. Couples can enter into cohabitation agreements that outline the rights and responsibilities of each partner, including financial support and property division.

b. Social Security Benefits

Ensuring that female partners have access to social security benefits, such as health insurance policies that allow for the inclusion of a live-in partner as a beneficiary, providing them with medical coverage and pension schemes could be modified to recognize live-in partners as eligible beneficiaries, especially if the couple has cohabited for a significant period. If the couple has children, the female partner may be entitled to parental benefits such as maternity leave and child support.

c. Legal provision for Child support and custody

Despite the rulings, there is an urgent need for a legal provision that addresses the status and protection of the rights of children born into such a relationship. There must be a clause that specifies who would be in charge of raising the child if the parties to a living arrangement decide to separate to protect the child's rights if neither parent wants to keep the child. The court may

appoint a guardian to make sure that his rights are truly granted. The child ought to be entitled to receive a portion of the assets owned by both the mother and the father.

d. Awareness campaign for young generations

Live-in relationships can have repercussions such as pregnancy, adolescent depression, or sexually transmitted diseases. Therefore, youngsters must be made aware of the benefits and drawbacks of such a relationship.
